IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 36450 of 2004(L)

AGAINST THE ORDER IN EP.369/2003 IN
OS.266/2001 of PRL.SUB COURT,IRINJALAKUDA
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PETITIONERS:
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1. SETHUMADHAVAN,
   S/O. THOTTUPURAM CHANDRAN, PERAMBRA DESOM,
   KODAKARA VILLAGE, MUKUNDAPURAM TALUK.

2. NARAYANANKUTTY S/O. POOYATH RAMAN,
   VAILUR DESOM, NELLAYI VILLAGE,
   MUKUNDAPURAM TALUK.

3. VISWAMBRAN,
   S/O. CHEMBIPARAMBIL KUMARAN, THOTTIPAL VILLAGE
   AND DESOM, MUKUNDAPURAM TALUK.

4. RAMACHANDRAN,
   S/O. ELAPPILLIL SANKARAN NAIR, NELLAYI VILLAGE,
   MUKUNDAPURAM TALUK.

5. MOHANAN, KODAKARA VILLAGE,
   MUKUNDAPURAM TALUK.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SRI.SUNIL SHANKER

RESPONDENTS:
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1. JEWEL ROCK HIRE PURCHASE AND KURIES
   PVT.LTD., KURUPPAM ROAD, TRICHUR.

2. SASIKUMAR, S/O. VENUGOPALAN NAIR,
   MALIEKKAL HOUSE, NELLAYI, MUKUNDAPURAM.

BY ADV. SRI.P.K.RAVISANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC 36450 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER IN EA NO.2035 OF 2004 IN EP 369/03 IN OS 266/01 OF THE SUB COURT, IRINJALAKUDA.

EXT.P2 : TRUE COPY OF THE ORDER IN EP 369/03 IN OS NO.266/01 OF THE SUB COURT, IRINJALAKUDA.

/TRUE COPY/

PA TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 36450 OF 2004

Dated this the 9th day of August, 2007

JUDGMENT

This Writ Petition is remaining defective on the reason that the 2nd respondent who was the principal debtor in the decree has not been served with notice. I am of the view that, in the nature of this case, it is not necessary that the principal debtor be served with notice since the liability of the petitioners is concededly co-existent with that of the principal debtor.

2. Under Ext.P1, the learned Subordinate Judge dismissed the application filed by the petitioner for grant of 2 years time for settling the liability. Under Ext.P2, the learned Subordinate Judge also noticed that no contention that the petitioners are not having means had been raised out and on that basis and also noticing the delay caused in the matter of discharging the decree debt, issued warrant for arresting them.

3. Heard both sides. This court became inclined to grant stay of further proceedings pursuant to Ext.P2 by imposing condition that a sum of Rs.5,000/- be paid within a period of one month. It appears to me that this court became impressed by the claims made in paragraph 3 of the statement of facts to the Writ Petition. It would appear the petitioners were paying regularly at the rate of Rs.5,000/-. Learned

counsel for the respondent-decree holder submits that all the payments except the payment dt.17.3.04 mentioned in that paragraph were made against claims in a previous EP and only the last payment was towards the present EP. Inclusive of that payment, only Rs.10,000/- has been paid. There is no serious dispute to this submission of the learned counsel.

Having considered the relevant circumstances which attend on this case and also the circumstance that the 2nd respondent who is employed abroad is the principal debtor, I dispose of the Writ Petition by issuing the following orders:

I set aside Exts.P1 and P2 but on condition that the petitioners shall pay every month commencing from the first of September 2007 at the rate of Rs.6,500/- towards the decree debt. In the event of any two defaults, Exts.P1 and P2 will revive. But, if the petitioners regularly make payments as ordered above, on the first of every month at the rate of Rs.6,500/- and they become confident that having paid off the entire decree debt, they will file an application before the court below for recording full satisfaction and the court below will pass appropriate orders on that application, after hearing both sides.

PIUS C. KURIAKOSE, JUDGE

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